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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,895	03/24/2004	Eduardo Ramirez de Arellano	LOSAS-0600	5350

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/807,895

Applicant(s)

RAMIREZ DE ARELLANO,  
EDUARDO

Examiner

Yvonne M. Horton

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18, 21-25, 27 and 28 is/are rejected.
- 7) ☒ Claim(s) 17, 19, 20 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The declaration under 37 CFR 1.132 filed 03/03/06 is insufficient to overcome the rejection of the claims based upon HAZARD as set forth in the last Office action because: the rejections are based specifically of the prior art discussion provided by HAZARD and not on the device of HAZARD.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-11 stand rejected and claims 14-16,18,21-25,27,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,833,188 to SEMMENS in view of US Patent #6,880,198 to HAZARD. In reference to claims 1,8 and 21, SEMMENS discloses the method of applying concrete to a building including the steps of mixing water and concrete having grains with an approximate diameter of one millimeter, column 1, lines 49-50 and column 2, lines 23-27; applying the concrete; and allowing the concrete to dry/harden. SEMMENS discloses the basic claimed invention except for the step of scraping a trowel to remove particles of an exterior surface of the concrete to thereby form voids therein. Further regarding claims 1 and 8 and regarding claim 22, the prior art discussion of HAZARD teaches that it is known in the art at the time the invention was made to scrape a trowel, column 1, line 32-33, to form voids

column 3, line 25 and 32. Also, in reference to allowing the composition to harden prior to troweling to form voids, as in claims 1,8,14,21,27 and 28, the prior art discussion of HAZARD, column 3, lines 23-26 teaches allowing the composition to dry/harden prior to removal of the excess material or filling of the irregularities. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the steps of SEMMENS with the step of using a trowel, as taught by HAZARD, in order to improve adhesion of the concrete to the substrate while also preparing the surface for exterior coatings. In reference to claims 2-5,9 and 23-25, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a known particle size suitable for the use intended as an obvious matter of design choice. Selection of particle size is particular to the desired volume of the mixture. For instance, mixtures with smaller particle sizes provide shear to lower density. Adjusting particle size regulates densities, compression, strength, insulation values, and composition weights. Regarding claims 6,7,10, and 11, SEMMENS, teaches applying the concrete by "projection – blowing, column 4, line 41; while HAZARD teaches spreading a concrete material with a trowel. In further reference to claim 8, both SEMMENS and HAZARD teaches the step of allowing the concrete to harden. With regards to claims 15 and 18, it would have been obvious to one having ordinary skill in the art at the time the invention was made that in the prior art discussion of HAZARD, if concavities, irregularities or valleys are formed in the composition that the composition is uneven and therefore not uniform. In reference to claim 16, it too is apparent that in the troweling process of the prior art method in HAZARD, whatever is positioned above

the major surface of the compound that is layed will be scraped off once the trowel passes thereover.

Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,883,188 to SEMMENS in view of US Patent #6,880,198 to HAZARD, as applied to claim 8 above, and further in view of US Patent #6,046,269 to NASS et al. SEMMENS, as modified by HAZARD, does not detail the use of an accelerant. However, NASS et al. teaches that it is known in the art to provide a concrete mixture with an accelerant - propylene glycol and methyl and carbitol. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the concrete of SEMMENS, as modified by HAZARD, with an accelerant, as taught by NASS et al. in order to speed the drying process.

Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #6,883,188 to SEMMENS in view of US Patent #6,880,198 to HAZARD, as applied to claim 8 above, and further in view of US Patent 4,229,225 to KRASZEWSKI et al. SEMMENS, as modified by HAZARD, does not detail the use of a plasticizer. However, KRASZEWSKI et al. teaches that it is known in the art to provide the concrete of SEMMENS, as modified by HAZARD, mixture with a plasticizer - propylene glycol and methyl and carbitol. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide concrete with a plasticizer, as taught by KRASZEWSKI et al. in order to provide the concrete with the ability to repel water.

***Allowable Subject Matter***

Claims 17,19,20 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 03/03/06 have been fully considered but they are not persuasive.

Regarding the applicant's argument that HAZARD does not teach forming voids via the troweling process, clearly the prior art discussion in HAZARD, as noted in the rejection above, details the use of a trowel to apply the compound. The process of troweling is old and very well known in the art. It is known that while scraping of a trowel over a cementitious material, especially a "grainy" cementitious material, some of the "grains" will be or are pulled from the compound and ultimately form voids or small alterations in the surface being formed. Furthermore, columns 2 through to column 3, lines 47 of HAZARD specifically details the prior art wherein concavities, irregularities, and valleys are formed in the compound.


In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

*Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, HAZARD is broad in his teaching of a compound because he is more concerned with the device used to smooth the compound. However, he does specifically detail the use of a "viscous material". The material of SEMMENS is clearly a "viscous material" and is capable of being troweled either using the prior art method disclosed in HAZARD or the device detailed by HAZARD.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yvonne M. Horton  
Art Unit 3635  
03/14/06